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No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, ~~1957~~ 1958

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA, AND FLORIDA, DEFENDANTS

Answer of the State of Louisiana to the Motion of the United States for Judgment.

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Answer of the State of Louisiana to the Motion of the United States for Judgment.

In response to the motion of the United States for judgment as to the first cause of action, the State of Louisiana says:

The motion of the United States for judgment should be denied. The Submerged Lands Act (67 Stat. 29) released and relinquished to each Gulf Coastal State an area extending seaward to its boundary as it existed prior to or at the time the state became a member of the Union, or as thereafter approved by Congress, and not to exceed three marine leagues from coast into the Gulf of Mexico.

The State of Louisiana shows that by Act of March 26, 1804, 2 Stat. 283, creating the territory of Orleans; by Act of February 20, 1811, 2 Stat. 641, enabling the people of the territory of Orleans to form a constitution and state government and by Act of April 8, 1812, 2 Stat. 701, providing for

the admission of the State of Louisiana into the Union, Congress established the territory of the State of Louisiana as all that area contained within the following limits, that is to say:

> "beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river, including all islands to the 32nd degree of latitude; thence due north, to the northernmost part of the 33rd degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain, to the Gulf of Mexico; thence bounded by the said gulf to the place of beginning; including all islands within three leagues of the coast, . . ."

The Constitution of Louisiana, adopted January 22, 1812, conforms to the said Enabling Act of Congress.[1]

This historic boundary of Louisiana existed prior to and at the time Louisiana became a member of the Union. The existence of this boundary requires that the motion of the United States for judgment against Louisiana be denied as a matter of law. However, if judgment against Louisiana should not be denied as a matter of law for this reason, then it should be denied because any attack

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[1]Extended to and including the Florida Parishes by Act of Congress, April 14, 1812 C. 57, 2 U.S. 708.

made by the United States on the validity of said boundary would involve genuine issues as to material facts, such as the understanding and meaning of documents, diplomatic correspondence, usage, contemporary construction, international law, various treaties, acts of purchase and the like. A full hearing should be granted and evidence taken.

In the case of *United States v. Texas*, 339 U. S. 707, 715, this Honorable Court stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts. . . If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

Further, Louisiana says that if this Honorable Court can and will take judicial notice of such documents, diplomatic correspondence, treaties, contemporary construction, international law and the like applicable thereto, part of which are now before the Court in Louisiana's original answer and appendix thereto, then Louisiana is entitled to a judgment on the pleadings recognizing its boundary as extending three marine leagues from its coast into the Gulf of Mexico.

WHEREFORE, the State of Louisiana prays

that the motion of the United States for judgment be denied.

JACK P. F. GREMILLION
Attorney General
State of Louisiana

STATEMENT IN SUPPORT OF MOTION

Since the filing of the amended complaint, the answers of defendants, and defendants' motion for pre-trial conference, the United States has filed its motion for judgment and a memorandum in support of its motion and in response to the defendants' motion for pre-trial conference asserting in essence, that no issues of fact are present and that the causes can be determined summarily on pleadings, briefs and arguments.

Louisiana joined in the motion for pretrial conference for the respective reasons set forth therein.

THE MOTION OF THE UNITED STATES SHOULD BE DENIED AS A MATTER OF LAW

The Submerged Lands Act (68 Stat. 29) relinquished and released to the several Gulf coastal States an area extending to their respective seaward boundaries as they existed prior to or at the time each state entered the Union or as they may have been theretofore approved by Congress. Prior to the purchase by the United States of the territory of Louisiana from France, this area was owned by France and Spain and again France, all of whom claimed territory into the Gulf of Mexico far in excess of three leagues from coast. When the United States purchased the Louisiana territory, to be held in trust for the states to be formed out of it, there was no basis in law then and there is no basis in law now for a federally-owned territory in the Gulf of Mexico beyond the states formed from it. The United States has never claimed,

and the Submerged Lands Act and the Outer Continental Shelf Lands Act together make it completely clear that the United States does not now claim any federal territory in the Gulf of Mexico, but only claims extra-territorial rights, and the area within which such rights are claimed begins only where the territorial limits set in the Submerged Lands Act ends.

The United States established with Spain, Mexico and Texas a common boundary in the Gulf of Mexico three marine leagues from land at the mouth of the Sabine River. An Act of Congress of the Republic of Texas defined the boundary of the Republic of Texas thus; "beginning at the mouth of the Sabine River, and running west along the Gulf of Mexico three marine leagues from land to the mouth of the Rio Grande,"[2] and this boundary was specifically recognized by the United States in its Treaty with the Republic of Texas signed at Washington on April 25, 1838.[3] The establishment of the southeast corner of the State of Texas three leagues seaward in the Gulf of Mexico at the mouth of the Sabine River as a part of the boundary between the United States and the Republic of Texas necessarily recognized that the southwest corner of the boundary of the State of Louisiana extended at least three marine leagues into the Gulf of Mexico.[4]

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[2]1 Gammel's Laws of Texas, pages 1193-1194.

[3]8 Stat. 511, 4 Miller's Treaties 133.

[4]Manchester vs. Massachusetts, 139 U.S. 240, 35 L. ed. 167.

This court in *United States v. State of Texas*,[5] and in *Louisiana v. Mississippi*,[6] has twice recognized that the boundary of the State of Louisiana, as fixed by this Act of 1812, includes a water area, declaring in the latter case the "ownership of the State of Louisiana in the land and water territory" described therein, and the United States is bound by said decisions.

As shown by the above, the boundary of Louisiana along the coast of the Gulf of Mexico was fixed at least three leagues from coast into said Gulf. This boundary is the seaward limit of the area released and relinquished to Louisiana by the Submerged Lands Act. While limitations on the national territory of three miles into the Atlantic and Pacific Oceans have been recognized, no such limitation has ever been recognized respecting the Gulf of Mexico. On the contrary, from the very beginning,[7] it was stated by President Jefferson that "the character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margin of protected navigation, as any nation whatever."

President Jefferson immediately preceded this statement by reference to the three league measurment and no authority exists to limit the national boundary in the Gulf of Mexico to three miles. Recognizing this historic background, Congress authorized

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[5]162 U.S. 1, 17. S. Ct. 725, 40 L. ed. 867.

[6]202 U.S. 1, 26 Sup. Ct. 408, 50 L. ed. 913.

[7]Note of Jefferson to the French Government of Nov. 8, 1793.

the President to cause a survey "within twenty leagues of any part of the shores of the United States,"[8] to be made; again the Congress authorized the Secretary of Commerce to designate the lines dividing the high seas and the inland waters.[9] The survey as actually made in the Gulf of Mexico pursuant to this authority, demonstrated the different character of the area in the Gulf of Mexico as anticipated by President Jefferson and demonstrates also the utter unreality of limiting the territorial claims of our nation and Louisiana to three miles in the Gulf of Mexico.[10]

In recognition of the unmistakable geographic facts affecting our nation, the Congress and the President, in the Submerged Lands Act, established three different boundary limits thus:

(1) Three miles in the Atlantic and Pacific Oceans;

(2) The International boundary in the Great Lakes; and

(3) Not to exceed three leagues from coast in the Gulf of Mexico.

If the area in the Gulf of Mexico be considered national territory, as we think it should, and therefore necessarily state territory, since the territories

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[8]2 Stat. 413, Feb. 10, 1807.

[9]28 Stat. 672, 33 U.S.C. 151, Feb. 19, 1895. Appendix to La. Brief, p. 58.

[10]Act 33 of the Legislature of Louisiana of 1954 recognizes this same coast line. See appendix to Louisiana Brief p. 54. The three leagues mentioned in the Submerged Lands Act relating to the Gulf of Mexico is measured seaward from this line.

must be co-extensive, Louisiana is entitled to three leagues in the Gulf of Mexico from its coast. If the area comes within the so-called extra-territorial rights, the Congress has the right to dispose of any property or property rights of the United States, and the exercise of this discretion and the measure of this disposition of the property or property rights of the United States are purely political matters. *Alabama v. Texas*, 347 U. S. 272. The Submerged Lands Act represents the joint action of the Congress and the President and must stand either as a recognition of Louisiana's right to its territory to its historic boundary or a disposition to Louisiana to that limit. As a matter of law, the motion of the United States for judgment should be denied.

NECESSITY FOR PRESENTING EVIDENCE

If the motion of the United States for judgment is not denied as a matter of law for the reasons stated above, then the motion should be denied because the contentions of the United States must necessarily involve material issues of fact, insofar as the United States seeks to impair or destroy the validity of the seaward boundary of Louisiana as it existed prior to or at the time she became a member of the Union.

In *United States v. Texas*, 339 U.S. 707, 715, this court, with reference to the plea of Texas to be heard on the facts, stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which

> involve issues of high public importance, has always been liberal in allowing full development of the facts. . . If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

Unlike *United States v. Texas, supra*, where the seaward boundary of Texas was assumed to exist at three marine leagues but the fact was held to be immaterial to the issues then before the court, the existence of the boundaries of the gulf states involved is the main issue in the present case. Moreover, the meaning and effect of the various treaties, documents, acts of purchase, territorial descriptions, statutes, and the like, which established Louisiana's historic boundary prior to or at the time she became a member of the Union, and as defined in the act creating the Territory of Orleans, the Enabling Act and Act of Admission of the State of Louisiana, as approved by the Congress, among many other documents, may be questioned by the United States. If questioned, the answer must be found in diplomatic correspondence, documentary construction, usage, international law, and the like. Under these circumstances as cited by this Court in the above case, the introduction of evidence and a full hearing are essential.

Much of the relevant source of material upon which the conclusion of international law must be

based is to be found in documents which the court probably has not judicially noticed, such as unpublished diplomatic correspondence now in the files of foreign state departments.

Louisiana, since her admission into the Union, has at all times, and with the acquiescence and approval of the United States exercised sovereign and proprietary rights in submerged lands adjoining its coast at least three (3) leagues therefrom. Evidence on this subject will be offered by Louisiana in the form of numerous maps, charts, records of the State Land Office, records of the State Department of Conservation and of the State Mineral Board, by the records of other state offices, and by the oral testimony of state officials and other witnesses.

Should the Court take judicial cognizance of these matters, they would show that Louisiana is entitled to a judgment in its favor, declaring that its historic boundary prior to or at the time it entered the Union was more than three leagues into the Gulf of Mexico from its coast. If these matters are not the subject of judicial cognizance by this Court and are allowed to be questioned by the United States, the answer of what Congress meant in 1812, when Louisiana was admitted to the Union, must be found in diplomatic correspondence, contemporary construction, usage, possession, international law, and the like. Under these circumstances, the introduction of evidence and the taking of such

expert testimony as necessary, and a full hearing, are essential, as Louisiana has suggested to this Court in its motion to present evidence and take depositions, filed herein on December 4, 1956, and fully reserved in Louisiana's prayer in its answer to the amended complaint.

TIME FOR FILING BRIEF

The United States suggests that it be granted sixty (60) days for the filing of its brief and the States be granted sixty (60) days for reply. The State of Louisiana has no objection to this suggestion; however, if our sister States in this litigation are allowed 120 days for answer, as suggested by several of them, Louisiana should be entitled to the same time. The United States suggests that it should have until one (1) week before argument for rebuttal. Louisiana objects to this suggestion. Its counsel would not receive such a brief sent through the mail prior to departure for Washington for the oral argument.

Louisiana suggests that the reply brief of plaintiff should be filed at least forty-five (45) days prior to argument for proper consideration.

Louisiana agrees with the suggestion of the United States that she be given the right to file at the same time as the other States, such additional brief as she desires, in the light of the contents of the present complaint and the brief of the United States.

TIME FOR ORAL ARGUMENT

Finally, we consider it premature to fix the time for oral argument pending the formation of issues and the determination of the necessity for and the extent of evidentiary material, testimony of such experts as necessary and the means of its presentation.

The statement hereby filed does not abandon the motion for a pre-trial conference which Louisiana considers necessary to the orderly presentation of this case.

JACK P. F. GREMILLION
Attorney General
State of Louisiana

PROOF OF SERVICE

I, Jack P. F. Gremillion, a member of the Bar of the Supreme Court of the United States, certify that on the.....day of February, 1958, I served copies of the foregoing pleadings and statement by mailing postage prepaid, copies thereof to the Office of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C., and to the Attorneys General of the States of Alabama, Texas, Florida and Mississippi, respectively.

JACK P. F. GREMILLION
Attorney General
State of Louisiana